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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/633,254

08/01/2003

Douglas G. Evans

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08/26/2008

Rutan & Tucker, LLP.

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SUITE 1400

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EXAMINER

WOO, JULIAN W

ART UNIT

PAPER NUMBER

3773

MAIL DATE

DELIVERY MODE

08/26/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/633,254	Applicant(s) EVANS ET AL.	
	Examiner Julian W. Woo	Art Unit 3773	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 August 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 1-4 and 120-132.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Julian W. Woo/
Primary Examiner, Art Unit 3773

Continuation of 7(b). Claims 1-4 and 120-131 would be rejected on the same grounds of rejection as presented in the Office action of June 18, 2008, and new claim 132 would also be rejected under 35 U.S.C. 103(a) as being unpatentable over Staskin et al. (6,612,977) in view of Richmond (4,509,516). With respect to claim 132, Staskin et al. disclose the invention substantially as claimed. Staskin et al. disclose, at least in figures 1, 1A, 4, 12A, 12B, 16A-16D, and 18A-18E; a system including an introducer needle (60A or 60B) having an elongated shaft connecting first and second spatulated sections (e.g., 126), where at least one of the spatulated sections has a tip, a constant width portion, where the shaft has straight portion connected to a curved portion, the first flat spatulated section connected to the curved portion a b a flared section (tapered portion of 170) having a cross-sectional profile that covers a cross-section profile of the first flat spatulated section; and a handle (64G) having housing with an elongated portion with a distal end opening, and an elastically biased latch portion (198) having a projection. However, Staskin et al. do not disclose that the constant width portion has an opening therethrough. Richmond teaches, at least in col. 2, lines 67 to col. 3, line 4 and col. 4, lines 41-44 and 51-60; an introducer needle with an opening (18) at each end of the needle. It would have been obvious to one having ordinary skill in the art at the time the invention was made, in view of Richmond, to include an opening in each end of the needle of Staskin et al. Such a modification would allow the needle of Staskin et al. to receive an implant (absent a connector) or a suture and thread the implant or suture through a narrow opening between organs or tissues. Also, contrary to Applicant's arguments, Staskin indeed discloses a needle including a first flat spatulated section, a flared section, a straight priton, a curved prtion, and a second flat spatulated section that are integrally formed, where given its broadest reasonable interpretation, "integrally formed" has been deemed to include separate parts "integrated together" or brought together to form a singular device. Additionally, Staskin indeed discloses a first arm (112') pivotally mounted to a central portion having first opening 116, or vice versa. That is, the hinge between 112' and 54b allows relative pivotal motion between 112' and the central portion, such that 112' can also be "fixed," while the central portion pivots relative to the first arm.